

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**EMMANUEL EVANGEL ELDER,**

Plaintiff,

v.

**ZACHARY MARTINEZ,**

Defendant.

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Civil Action No. **3:22-CV-126-L-BH**

**ORDER**

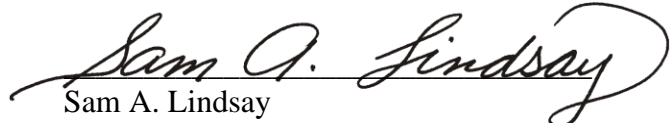
The Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 12) was entered on February 16, 2022, recommending that this action be dismissed without prejudice for failure to prosecute and comply with a court order under Federal Rule of Civil Procedure 41(b). No objections to the Report were filed as of the date of this order, and the deadline for filing objections has expired.

Having considered the file, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, pursuant to Rule 41(b), the court **dismisses without prejudice** this action for failure to prosecute and comply with a court order.

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the court **accepts and incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Report, the court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this

certification by filing a separate motion to proceed in forma pauperis on appeal with the clerk of the United States Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

**It is so ordered** this 8th day of March, 2022.

  
Sam A. Lindsay  
United States District Judge